

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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UNIVERSITAS EDUCATION, LLC,

Judgment Creditor, :

-against- :

NOVA GROUP, INC., as trustee, sponsor and :  
fiduciary of THE CHARTER OAK TRUST :  
WELFARE BENEFIT PLAN, :

Judgment Debtor, :

-and- :

Case Nos. 11 CV 1590-LTS-HBP and  
11-8726-LTS

Daniel E. Carpenter, Charter Oak Trust Welfare  
Benefit Plan, Grist Mill Capital, LLC, Grist Mill  
Holdings, LLC, the Grist Mill Trust Welfare  
Benefit Plan, Avon Capital, LLC, Hanover Trust  
Company, Carpenter Financial Group and Phoenix  
Capital Management, LLC, :

Respondents.  
-----X

**SUPPLEMENTAL AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
                                      )     SS.  
COUNTY OF NEW YORK    )

MICHAEL BARNETT, being duly sworn, deposes and says:

1. I am not a party to this action and am over 18 years of age.
2. On October 21, 2013, Universitas Education, LLC ("Universitas") filed with the United States District Court for the Southern District of New York (in Case No. 11-CV-1590, the

“Action”) a Notice of Motion and Motion for Turnover and Permanent Injunction, supported by the Declaration of Michael Barnett, dated October 9, 2013 and with Exhibits 1 through 53, and a Memorandum of Law dated October 9, 2013 (Dkt. Nos. 308-310 , collectively the “Motion”).

3. The Motion was filed against Respondents Daniel E. Carpenter, Grist Mill Capital, LLC, Grist Mill Holdings, LLC, Carpenter Financial Group, Avon Capital, LLC, Phoenix Capital Management, LLC, Grist Mill Trust Welfare Benefit Plan, Hanover Trust Company and the Charter Oak Trust Welfare Benefit Plan.

4. Paragraphs 5 through 13 of this Affidavit describe how I effected service of true copies of the Motion on all Respondents via email, with the consent of Respondents’ counsel. This Affidavit supplements the original Affidavit of Service filed simultaneously with the Motion on October 21, 2013 (Dkt. No. 214-1, also Exhibit 1 hereto).

5. Mr. Carpenter was also served by the Electronic Case Filing system. As of October 21, 2013, Anthony J. Siano, Esq., attorney for Mr. Carpenter, had appeared in the Action, having filed a Notice of Appearance on March 5, 2013. Dkt. No. 225. Service on Mr. Carpenter was thus effected simultaneously with Universitas’s electronic filing of the Motion. See SDNY Local Rule 5.2.

6. On October 21, 2013, I sent the following email to respective counsel for all Respondents (Exhibit 2):

**From:** Michael Barnett [<mailto:mbarnett@loeb.com>]  
**Sent:** Monday, October 21, 2013 2:38 PM  
**To:** [tonysiano@aol.com](mailto:tonysiano@aol.com); Carole Bernstein <[cbernsteinesq@gmail.com](mailto:cbernsteinesq@gmail.com)> ([cbernsteinesq@gmail.com](mailto:cbernsteinesq@gmail.com)); Glenn Duhl; Ira Kleiman ([ik@briefjustice.com](mailto:ik@briefjustice.com)); Matthew J. Brief <[mjb@briefjustice.com](mailto:mjb@briefjustice.com)> ([mjb@briefjustice.com](mailto:mjb@briefjustice.com))  
**Cc:** Paula Colbath; [labelle@halloran-sage.com](mailto:labelle@halloran-sage.com)  
**Subject:** Universitas Education, LLC v. Nova Group, Inc., Case No. 11-1590-LTS-HBP (S.D.N.Y.)

Dear Counsel:

This afternoon, Universitas Education, LLC filed a turnover motion and motion for permanent injunction, naming the following as Respondents:

- i. Daniel E. Carpenter
- ii. Grist Mill Capital, LLC
- iii. Grist Mill Holdings, LLC
- iv. Carpenter Financial Group
- v. Avon Capital, LLC
- vi. Phoenix Capital Management, LLC
- vii. Grist Mill Trust Welfare Benefit Plan
- viii. Hanover Trust Company
- ix. Charter Oak Trust Welfare Benefit Plan

Based on prior correspondence, we understand these Respondents to be represented by the following attorneys:

- i. Respondents Daniel E. Carpenter, Grist Mill Holdings, LLC, Carpenter Financial Group, Phoenix Capital Management, LLC and Hanover Trust Company – represented by **Anthony J. Siano**
- ii. Respondents Grist Mill Capital, LLC and Avon Capital, LLC – represented by **Carole R. Bernstein**

- iii. Respondent Grist Mill Trust Welfare Benefit Plan – represented by **Glenn A. Duhl**
- iv. Respondent Charter Oak Trust Welfare Benefit Plan – represented by **Ira Kleiman and Matthew J. Brief**

By this e-mail we are attempting to effect service of the motion upon each of the Respondents by e-mail to respective counsel. Please let me know by Wednesday, October 23 at noon if (a) I am misunderstood as to a certain attorney representing a certain Respondent and/or (b) a Respondent who has not already appeared in the action declines to accept service by e-mail.

Please find attached (in a .ZIP file) copies of the papers filed today in support of Universitas' motion, as well as a copy of our letter to Judge Swain enclosing courtesy copies of the papers.

Thank you.

Sincerely,

Michael

7. On October 23, 2013, Ira Kleiman, Esq., of the law firm of Brief Carmen & Kleiman LLP, agreed via email to accept service of the Motion via email on behalf of his client the Charter Oak Trust Welfare Benefit Plan. See Exhibit 3.

8. On October 23, 2013, Glenn A. Duhl, Esq., of Siegel, O'Connor, O'Donnell & Beck, P.C., representing the Grist Mill Trust Welfare Benefit Plan, sent me the following email (Exhibit 4):

**From:** Glenn Duhl [<mailto:gduhl@siegelconnor.com>]  
**Sent:** Wednesday, October 23, 2013 4:50 PM  
**To:** Michael Barnett; [tonysiano@aol.com](mailto:tonysiano@aol.com); Carole Bernstein <[cbernsteinesq@gmail.com](mailto:cbernsteinesq@gmail.com)> ([cbernsteinesq@gmail.com](mailto:cbernsteinesq@gmail.com)); Ira Kleiman ([ik@briefjustice.com](mailto:ik@briefjustice.com)); Matthew J. Brief <[mjb@briefjustice.com](mailto:mjb@briefjustice.com)> ([mjb@briefjustice.com](mailto:mjb@briefjustice.com))  
**Cc:** Paula Colbath; [labelle@halloran-sage.com](mailto:labelle@halloran-sage.com)  
**Subject:** RE: Universitas Education, LLC v. Nova Group, Inc., Case No. 11-1590-LTS-HBP (S.D.N.Y.)

Michael: I am willing to accept service provided that we (all) may serve our responsive papers on November 12, 2013. May I have your agreement? Thank you, Glenn

Glenn A. Duhl, Esq.  
Siegel, O'Connor, O'Donnell & Beck, P.C.  
150 Trumbull Street  
Hartford CT 06103-2446  
Direct: (860) 280-1215  
Cell: (203) 623-1465  
Fax: (860) 527-5131  
[gduhl@siegelconnor.com](mailto:gduhl@siegelconnor.com)  
[www.siegelconnor.com](http://www.siegelconnor.com)

Management employment law and litigation.

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NOTICE: This message contains information that is confidential and privileged. If you are not the intended recipient, please inform the sender, [gduhl@siegelconnor.com](mailto:gduhl@siegelconnor.com), immediately by reply e-mail and delete this message with all attachments without retaining a copy. Thank you.

9. I responded to Mr. Duhl the same day, as follows (Exhibit 5):

-----Original Message-----

From: Michael Barnett <[mbarnett@loeb.com](mailto:mbarnett@loeb.com)>

To: 'Glenn Duhl' <[gduhl@siegelconnor.com](mailto:gduhl@siegelconnor.com)>

CC: Paula Colbath <[pcolbath@loeb.com](mailto:pcolbath@loeb.com)>, "'labelle@halloran-sage.com'"  
<[labelle@halloran-sage.com](mailto:labelle@halloran-sage.com)>, "'tonysiano@aol.com'" <[tonysiano@aol.com](mailto:tonysiano@aol.com)>,  
"'Carole Bernstein <[cbernsteinesq@gmail.com](mailto:cbernsteinesq@gmail.com)> (<[cbernsteinesq@gmail.com](mailto:cbernsteinesq@gmail.com)>)"  
<[cbernsteinesq@gmail.com](mailto:cbernsteinesq@gmail.com)>, "'Ira Kleiman (<[ik@briefjustice.com](mailto:ik@briefjustice.com)>)"  
<[ik@briefjustice.com](mailto:ik@briefjustice.com)>, "'Matthew J. Brief <[mjb@briefjustice.com](mailto:mjb@briefjustice.com)>  
([mjb@briefjustice.com](mailto:mjb@briefjustice.com))'" <[mjb@briefjustice.com](mailto:mjb@briefjustice.com)>

Date: Wed, 23 Oct 2013 18:24:33 -0500

Subject: RE: Universitas Education, LLC v. Nova Group, Inc., Case No.  
11-1590-LTS-HBP (S.D.N.Y.)

Glenn,

Thanks for your e-mail.

In consideration for all Respondents accepting e-mail service through counsel, we propose that Respondents' oppositions be due on November 20 and that our replies be due on December 30. Under this proposal, here's how the full schedule on this motion would look:

- Carpenter opposition to preliminary injunction motion due – **Oct. 25** (already ordered)
- Document requests to Respondents due – **Oct. 28** (already ordered)
- Reply on Carpenter injunction motion due – **Nov. 1** (already ordered)
- Respondents' oppositions on turnover due **Nov. 20** (proposed by me)
- Respondents' document productions due **Nov. 22** (already ordered)
- Order to Show Cause hearing on Carpenter injunction motion – **Nov. 22** (already ordered)
- Depositions on turnover motion to take place **Dec. 2-16** (already ordered)
- Our reply on turnover due **Dec. 30** (proposed by me)

Please let me know if this appeals. I understand that Carole still needs a few more days to determine whether she will be representing Grist Mill Capital and Avon Capital in response to our motion. If all Respondents accept e-mail service and the above schedule is agreeable to all, we can enter into and file a Stipulation on the schedule.

Sincerely,

Michael

10. On October 25, 2013, and then again on October 28, 2013, Carole Bernstein, Esq. agreed via email to accept service of the service of the Motion via email on behalf of her clients Grist Mill Capital, LLC and Avon Capital, LLC. See Exhibits 6 and 7.

11. On October 28, 2013, Mr. Duhl agreed via email to accept service of the Motion via email on behalf of his client the Grist Mill Trust Welfare Benefit Plan. See Exhibit 8.

12. On November 8, 2013, Mr. Siano, who represents Mr. Carpenter, Grist Mill Holdings, LLC, Carpenter Financial Group, Phoenix Capital Management, LLC and Hanover Trust Company, responded via email that the stipulation on briefing – which I conditioned on his acceptance of email service – was acceptable. See Exhibit 9.

13. Thereafter, on or about November 13, 2013, Universitas and all Respondents signed and stipulated to, and the Court so-ordered, a briefing schedule on the Motion. See Dkt. No. 332.

14. All Respondents timely filed briefs in opposition to the Motion and were represented at the oral argument of the Motion that took place on June 18, 2014.



Michael Barnett

Sworn to before me this  
20th Day of June, 2014



Notary Public

TIMOTHY B. CUMMINS  
Notary Public, State of New York  
No. 01CU6113096  
Qualified in New York County  
Commission Expires July 19, 2016